

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3014 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgment?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

DHARMESH @ KALU LALABHAI KAHAR

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

MR JAYESH A DAVE for the Petitioner.
Ms.Archana Raval, Assistant GOVERNMENT PLEADER,
for Respondent No. 1-3
RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 02/08/2004

ORAL JUDGEMENT

Leave to amend by correcting the name of the petitioner, and instead of Dharmesh alias Kalu Lalabhai Kahar, name of the petitioner should be read as Dharmesh alias Kala Lalabhai Kahar.

By filing this petition, the petitioner has challenged his detention order dated 18.5.2002, by which

he is detained as a 'bootlegger' under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the order of detention, the petitioner is also given the grounds of detention. In the grounds of detention, there is a reference about a criminal case dated 21.2.2002. It is alleged against the petitioner that he, along with his other associates, named Suresh Jeram Kahar, Shailesh Vasantlal Arya and Satyan Dhiraj Patel, have tried to bring illicit liquor for selling it without permit. Considering the aforesaid criminal case, which is registered as Guna Register No.645 of 2002, the petitioner is detained under PASA. It is the aforesaid order, which is under challenge in this petition.

Mr.Dave, learned Advocate for the petitioner, submitted that the co-detenu, Shailesh Vasantlal Arya, is already released by this Court (Coram : R.P. Dholakia, J.) vide order dated 22.10.2002 passed in Special Civil Application No.6012 of 2002. It is submitted that Shailesh Vasantlal Arya, petitioner in Special Civil Application No.6012 of 2002, is the co-detenu in the case, and similar role is attributed to the petitioner and this Court has released the co-detenu on the ground that there is a delay of about three months in passing the detention order. This Court (Coram : R.P. Dholakia, J.) has observed as under :-

"

4. It appears that the only offence registered against the petitioner was dated 21.2.2002 and order of detention was passed on 18.5.2002 based on this offence and hence, there is a delay in passing the order. No satisfactory explanation is forthcoming for the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

... .."

Since the present case is identical to the aforesaid case and on the ground of parity, this petition is also required to be allowed on the ground of delay in passing the detention order.

The petition is accordingly allowed on the ground of delay in passing the detention order. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. The Rule is made absolute accordingly.

2nd August, 2004 (P.B. Majmudar, J.)

(apj)